

FEDERAL COMMUNICATIONS COMMISSION

Washington, D. C. 20554

MAY 1 2015

OFFICE OF
MANAGING DIRECTOR

Jason S. Roberts, Esq.
Senior Counsel
Tribune Company
435 North Michigan Avenue
Chicago, Illinois 60611-4066

Licensees/Applicants: Tribune Company, Debtor-In-Possession, and 31 Names Subsidiaries of Tribune Company
Waiver and Deferral of Regulatory Fees: Financial Hardship (Bankruptcy)
Disposition: **Dismissed and Denied** (47 U.S.C. §159(c)(2); 47 C.F.R. §§ 0.401, 1.7, 1.1164, 1.1166)
Stations: 31 Media and International/Satellite Stations
Fee: Fiscal Year (FY) 2012 Regulatory Fees
Fee Control No.: RROG-12-00014695
Amount Due: See Fee Filer

Dear Mr. Roberts:

This responds to Licensees'¹ *Request*² for deferral from payment and either a waiver of \$767,550.00 for fiscal year (FY) 2012 annual regulatory fees or, in the alternative, a partial waiver of \$499,930.00. Licensees paid \$267,620.00, the FY 2012 annual regulatory fees due for 16 subsidiary licensees, but left unpaid \$499,930.00 for 15 other subsidiary licensees. As we discuss below, we dismiss the *Request* because Licensees failed to file the *Request* and it was not properly documented, and we deny, and demand payment of the balance owed, because Licensees failed to show both extraordinary and compelling circumstances and that a waiver will promote the public interest.

¹ Licensees include Tribune Company, Debtor-In-Possession, and 31 named subsidiaries.

² Email from Laurie J. McCarty, Communications Specialist, Dow Lohnes PLLC, 1200 New Hampshire Ave., NW, Suite 800, Washington DC 20036-6802 (*Email from L.J. McCarty*), with letter from Jason S. Roberts, Senior Counsel, Tribune Company, 435 North Michigan Ave., Chicago, IL 60611-4066 by electronic filing to Marlene H. Dortch, Secretary, FCC, Attn: Office of the Managing Director, Washington, D.C. 20554 (Sep. 13, 2012) captioned, Petition for Deferral and Waiver of FY 2012, or in the Alternative, Petition for Partial Deferral and Waiver of FY 2012 Regulatory Fees for Tribune Company, Debtor-In-Possess (*Request*) with Exhibit A, Table 1: Total Fiscal Year 2012 Regulatory Fees, Table 2: Total Paid Fiscal Year 2012 Regulatory Fees, Table 3: Total Unpaid Fiscal Year 2012 Regulatory Fees, Exhibit B, Petition for Bankruptcy, Attachment 1 to Voluntary Petition (All Other Names Used by Debtor), Attachment 2 (Pending Bankruptcy Cases Filed by Affiliates of Debtor), Attachment 3 to Voluntary Petition (All real or personal property posing a threat), Bankruptcy Court Order, Order Granting The Debtors' Motion Pursuant To 11 U.S.C. §§ 363(b) And 363(c)(1) Authorizing, But Not Requiring, The Debtors to Continue To Operate In The Ordinary Course, Including Payment of Pre-petition Date Claims, With Respect to Brokers. Certificate of Resolutions, Exhibit C, Pending Assignment Applications, Exhibit D, Documentation Regarding Partial Payment of 2012 Regulatory Fees.

Background

On September 13, 2012, Licensees submitted their *Request* with attachments electronically to the Commission's ARINQUIRIES email address.

Licensees seek "deferral and permanent waiver of Fiscal Year 2012 Annual Regulatory Fees"³ on the grounds that since "December 8, 2008, Tribune Company and 110 of its direct and indirect wholly owned subsidiaries"⁴ have been in a Chapter 11 bankruptcy proceeding. Since then, Licensees "operate[d] 31 stations"⁵ as debtors-in-possession under the Bankruptcy Court's oversight[, and] on April 28, 2010, Licensees' Subsidiaries [sought] consent to the assignment of the FCC licenses to restructured Licensee Subsidiaries following the Bankruptcy Court's approval of Tribune Company's Plan of Reorganization."⁶ On November 16, 2012, the Commission approved the applications.⁷

Licensees include three exhibits,⁸ and they assert that under 47 C.F.R. § 1.1166, the fees should be waived because "the Commission has repeatedly stated that evidence of Chapter 11 bankruptcy at the time regulatory fees are due is itself a sufficient demonstration of financial hardship justifying waiver of regulatory fees under the case-by-case review described in Section 1.1166."⁹ Licensees add, "many individual fee decisions ... ha[ve] held that waivers are justified ... and that evidence of bankruptcy at the time the fees are due is conclusive to establish financial hardship."¹⁰ Later, on November 20, 2012, in response to our request for additional information, Licensees furnished the Fourth Amended Joint Plan of Reorganization for Tribune Company and its Subsidiaries Proposed by the Debtors, the Official Committee of Unsecured Creditors, Oaktree Capital Management, L.P., Angelo, Gordon & Co., L.P. and JPMorgan Chase Bank N.A. (Jul. 19, 2012) (*Plan*), the Order Confirming Fourth Amended Joint Plan of Reorganization for Tribune Company and its Subsidiaries Proposed by the Debtors, the Official Committee of Unsecured Creditors, Oaktree Capital Management, L.P., Angelo, Gordon & Co., L.P. and JPMorgan Chase Bank N.A. (Jul. 23, 2012) (*Confirmation Order*), and the Commission's Memorandum Opinion and Order on the Applications of Tribune Company and its Licensee Subsidiaries, Debtors in Possession For Consent to Assignment of Licenses Pursuant to a Plan of Reorganization.¹¹

³ *Request* at 1.

⁴ *Id.*

⁵ *Request*, Exhibit A, Table 1.

⁶ *Request* at 2, Licensees did not furnish a copy of the Plan for Reorganization until November 20, 2012. See FCC MB-CDBS Electronic Filing, WGN-TV WGN Late June 2010 Amendment, FCC 314, Application for Consent to Assignment of Broadcast Station Construction Permit or License, File No.: 20100428AEL, Exhibit 12, Comprehensive Exhibit, *In re: Tribune Company, et al.*, U.S. Bankruptcy Court, Delaware, (Chap 11, Case No. 08-13141 (KJC)), Disclosure Statement for Amended Joint Plan of Reorganization for Tribune Company and its Subsidiaries (*Disclosure Statement*) (Jun. 4, 2010) (*Assignment Application*).

⁷ *Request*, Exhibit C, Pending Assignment Applications. (Applications approved Nov. 16, 2012 MB Docket No. 10-104, DA 112-1858.).

⁸ See text at n. 2, above.

⁹ *Request* at 2.

¹⁰ *Id.*

¹¹ Applications of Tribune Company and its Licensee Subsidiaries, Debtors in Possession For Consent to Assignment of Licenses Pursuant to a Plan of Reorganization, *Memorandum Opinion and Order* (DA 12-1858, Nov. 16, 2012).

Standards

The Commission's rules at 47 C.F.R. §§ 0.401, 1.7, and 1.1166 establish the proper location and procedures for filing waiver requests, and the consequence of dismissal for failing to comply. The Commission has designated specific offices to receive and process certain matters, thus a request for relief is *filed* only upon receipt at the location designated by the Commission.¹² For example, under section 1.1166 of the Commission's rules, a petition to waive a regulatory fee "must be accompanied by the required fee and FCC Form."¹³ If the request is accompanied by the fee, the request must be submitted to the Commission's lockbox bank.¹⁴ Waiver requests that do not include the required fees or form will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.¹⁵ "If no fee payment is submitted, the request should be filed with the Commission's Secretary."¹⁶ Filing is accomplished by mailing or otherwise delivering a hard copy of the documents to Office of the Secretary, Federal Communications Commission, Attention: Managing Director, Washington, D.C. 20554.

Under 47 U.S.C. § 159(c)(2) and 47 C.F.R. §§ 1.1164(e), 1.1166, and 1.1910(a)(2) & (3), the Commission will dismiss applications filed by delinquent debtors.¹⁷ The application will be dismissed, and it may be resubmitted only if accompanied by the required regulatory fee and by any assessed penalty.¹⁸

Furthermore, under 47 U.S.C. § 159 and 47 C.F.R. §§ 1.1166, the Commission imposes the statutory penalty¹⁹ on any licensee that submits a request for a waiver based on financial

¹² 47 C.F.R. §§ 0.401 ("The Commission maintains several offices and receipt locations. Applications and other filings not submitted in accordance with the addresses or locations ... will be returned to the applicant without processing."); 1.7 ("pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission."); *Champion Communication Services, Inc., Order on Reconsideration*, 15 FCC Rcd 23782, 23783-84 (WTB 2000).

¹³ 47 C.F.R. § 1.1166(c).

¹⁴ 47 C.F.R. § 1.1166(a)(1).

¹⁵ 47 C.F.R. § 1.1166(b); *Assessment and Collection of Regulatory Fees For Fiscal Year 2011, Report and Order*, 26 FCC Rcd 10812, 10819, ¶ 17 (2011) ("A regulatee's mere allegation of financial hardship thus does not automatically entitle it to a deferral of its obligation to pay regulatory fees; only a properly supported claim of financial hardship will entitle the regulatee to a deferral. Accordingly, if a request for deferral is not supported by documentation of financial hardship, it will be denied, and an associated petition for waiver or reduction will be dismissed. A regulatee cannot delay payment on the theory that its deferral request triggered an automatic six-month extension of its obligation to pay.").

¹⁶ 47 C.F.R. § 1.1166(a)(2).

¹⁷ 47 U.S.C. § 159(c)(2) ("The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section."); 47 C.F.R. §§ 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment."); 1.1166(c) ("Waiver requests that do not include the required fees or forms will be dismissed unless accompanied by a petition to defer payment due to financial hardship, supported by documentation of the financial hardship.").

¹⁸ 47 C.F.R. § 1.1164(e).

¹⁹ 47 U.S.C. § 159; 47 C.F.R. § 1.1166; *Waivers, Reductions and Deferrals of Regulatory Fees, Regulatory Fees Fact Sheet* (Sep. 5, 2013) 2013 WL 4773993 (F.C.C.) ("The Commission will dismiss any petition for waiver of a regulatory fee that does not include a payment or the required petition for deferral and supporting documentation, and under 47 U.S.C. § 159(c) and 31 U.S.C. § 3717, the Commission is required to impose the 25% penalty and

hardship that does not include either the full fee or a timely petition to defer payment supported by documentation of the financial hardship.

The Commission recognizes that in certain instances, payment of a regulatory fee may impose an undue financial hardship upon a licensee, and it may be waived, reduced, or deferred upon a showing of good cause²⁰ and a finding that the public interest will be served thereby.²¹ The burden rests with the petitioner to demonstrate a waiver is warranted,²² *i.e.*, that special circumstances warrant a deviation from the general rule, here to collect the regulatory fee, and that the deviation will serve the public interest.²³ Specifically, an applicant must show extraordinary and compelling circumstances that outweigh the public interest in recouping the Commission's regulatory costs.²⁴ The required "sufficient showing of financial hardship"²⁵ is more than "[m]ere allegations or documentation of financial loss, standing alone." "[I]t [is] incumbent upon each regulatee to fully document its financial position and show that it lacks sufficient funds to pay the regulatory fee and to maintain its service to the public."²⁶ Thus, to establish a basis for waiver predicated on financial need, the regulatee must provide financial documents including, *e.g.*, a licensee's balance sheet and profit and loss statement (audited, if available), a cash flow projection for the next twelve months (with an explanation of how calculated), a list of their officers and their individual compensation, together with a list of their highest paid employees, other than officers, and the amount of their compensation, or similar information. On this information, the Commission considers on a case-by-case basis whether the licensee met the standard to show the station lacks sufficient funds to pay the regulatory fee and maintain service to the public.²⁷

other relevant charges. A request for waiver, reduction or deferral must be received before the fee due date. * * * The Commission will dismiss a waiver request filed by a delinquent debtor or a petition that does not have the required financial documentation.").

²⁰ 47 C.F.R. § 1.3.

²¹ 47 U.S.C. §159(d); 47 C.F.R. § 1.1166. *See also* Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Report and Order*, 9 FCC Rcd 5333, 5344 (1994), *recon. denied*, 10 FCC Rcd 12759 (1995) (1994 *Report and Order*); *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969); *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*).

²² *Tucson Radio, Inc. v. FCC*, 452 F.2d 1380, 1382 (D.C. Cir. 1971).

²³ *Northeast Cellular*, 897 F.2d at 1166.

²⁴ 1994 *Report and Order*, 9 FCC Rcd at 5344 ¶ 29; *Phoenix Broadcasting, Inc. Stations KSWD and KPFN Seward, Alaska, Memorandum Opinion and Order*, 18 FCC Rcd. 26464, 26446, ¶¶ 5-6 (2003) ("Fee relief may be granted based on asserted financial hardship, but only upon a documented showing that payment of the fee will adversely impact the licensee's ability to serve the public. ... [I]n the absence of a documented showing of insufficient funds to pay the regulatory fees, [applicant] has not made a compelling showing that overrides the public interest in the Commission's recouping the costs of its regulatory activities.").

²⁵ Implementation of Section 9 of the Communications Act, Assessment and Collection of Regulatory Fees for the 1994 Fiscal Year, *Memorandum Opinion and Order*, 10 FCC Rcd 12759, 12761-62, ¶ 13 (1995) (*FY 1994 MO&O*).

²⁶ *Id.*

²⁷ *Id.*

An applicant's verified evidence of bankruptcy is relevant;²⁸ however, "in some circumstances a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions."²⁹ Thus, an applicant must present "extraordinary and compelling circumstances showing that a waiver ... would override the public interest" in collecting the fee,³⁰ and we analyze the facts of each case to determine whether the applicant has satisfied both prongs of the Commission's standard, financial hardship and extraordinary³¹ and compelling circumstances³² showing waiver is justified.³³

The bankruptcy proceeding and the applicant's place therein are established with verified court records, such as, in a reorganization under Chapter 11 of the Bankruptcy Code, copies of the relevant filings, forms, and evidence the trustee or debtor-in-possession has complied with its required duties³⁴ by including court-filed financial reports.³⁵ Relevant to this request is the purpose of a Chapter 11 proceeding, which is to restructure the debtor's obligations and allow its business to continue successfully after confirmation.³⁶ The bankruptcy process, which begins with filing a petition and an automatic stay and continues until confirmation of the plan, provides the debtor with breathing room for its business to recoup, evaluate, and deal with creditors. During the process, the debtor operates the business as a debtor-in-possession or under the direction of a trustee, and pays current obligations. The debtor also develops a plan dealing with creditors, and it projects post-confirmation operations. Relevant to post-petition and post-confirmation operations are court-filed financial documents, including, *e.g.*, a statement of financial affairs, monthly operating reports, the plan,³⁷ and a disclosure statement with debtor's plan for the business going forward that has timely and accurate financial information with

²⁸ See *id.* at 12762, ¶ 14 ("[W]here a bankruptcy trustee, receiver, or debtor in possession is negotiating a possible transfer of a license, the regulatory fee could act as an impediment to the negotiations and the transfer of the station to a new licensee.").

²⁹ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Notice of Proposed Rulemaking*, 18 FCC Rcd 6085, 6090, ¶ 11 (2003) ("Although fee waivers will generally be given in cases of financial hardship, we nevertheless note that even under our current policies, in some circumstances a significant question may exist as to whether bankruptcy represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions. ... We therefore emphasize that under the statutory waiver provisions, case-by-case review of fee waiver requests is necessary to determine the public interest, even in bankruptcy cases.").

³⁰ 47 U.S.C. § 159(d) ("The Commission may waive, reduce, or defer payment of a fee in any specific instance for good cause shown, where such action would promote the public interest."); 47 C.F.R. § 1.1166 ("fee ... may be waived, reduced or deferred in specific instances, on a case-by-case basis, where good cause is shown and where waiver, reduction or deferral of the fee would promote the public interest."). *FY 1994 MO&O*, 10 FCC Rcd at 12761, ¶ 12.

³¹ Black's Law Dictionary (9th ed. 2009) (extraordinary—"a highly unusual set of facts that are not commonly associated with a particular thing or event").

³² *Id.* (compelling—"something so great that irreparable harm or injustice would result if not met").

³³ Assessment and Collection of Regulatory Fees for Fiscal Year 2003, *Report and Order*, 18 FCC Rcd 15985, 15989-90, ¶¶ 11, 13, 14 (2003).

³⁴ See 11 U.S.C. § 521.

³⁵ 11 U.S.C. §§ 1106, 1107, 1166; Fed. R. Bkr. P., Rule 1007.

³⁶ *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203 (1983); *In re Lee Min Ho Chen*, 482 B.R. 473, 478 (D. Puerto Rico, Bkrty, 2012), *In re Gyro-Trac (USA), Inc.*, 441 B.R. 470, 479 (D.S.C. Bkrty, 2010).

³⁷ 11 U.S.C. § 1129.

projections.³⁸ Consistent with our standards, an applicant seeking a waiver of fees post-petition must include relevant financial documentation, such as the plan reflecting debtor-applicant's reasonable financial projections, including the annual regulatory fees.³⁹

Discussion

Licensees ask us to waive \$767,550, the FY 2012 annual regulatory fees due from 31 licenses or, in the alternative, to waive \$499,930, the unpaid fees on 15 licenses.⁴⁰ As we discuss below, Licensees' submission fails to comply with our procedures for filing a timely request for relief and petition to defer payment, and to meet our standards to obtain waivers.

First, we dismiss because Licensees failed to conform their submission to our rules for filing a request to waive the annual regulatory fees and a petition to defer payment of the fees until the Commission reaches a decision on the request for a waiver. Specifically, Licensees never filed the *Request* because they submitted it by email to ARINQUIRIES.⁴¹ A request for relief is filed only upon receipt at the location designated by the Commission.⁴² The *Email from L.J. McCarty* with the *Request* and exhibits does not ameliorate problems resulting from the improper submission. Under 47 C.F.R. § 1.1166(a)(1) and (2), if the fee is paid, "the request must be submitted to the Commission's lockbox bank" and "[i]f no fee payment is submitted, the request should be filed with the Commission's Secretary." Moreover, by failing to include the available necessary documents, discussed below, Licensees did not properly document their petition to defer payment of the fees due on 15 licensees, and on that additional ground, we dismiss.⁴³

The consequences for failing to follow our rule are serious. Because Licensees failed to file properly their *Request* and petition to defer payment,⁴⁴ and they did not pay the fees for 15 licenses, they are delinquent. Thus, the 25% late payment penalty applies. Furthermore, because of the delinquency, Licensees are subject to sanctions, including those set forth at 47 U.S.C. § 159(c)(2),⁴⁵ 47 C.F.R. §§ 1.1164, 1.1166, and 1.1910 (the Commission's red light rule), and the

³⁸ See e.g., 11 U.S.C. §§ 1125, 1129; see also *In re Ferguson*, 474 B.R. 466, 476 (D. S.C. Bkrtcy, 2012) ("to satisfy the requirements of adequate information under [11 U.S.C.] § 1125, a disclosure statement must contain the necessary financial information, data, and projections").

³⁹ See *In re Idearc, Inc.*, 423 B.R. 138, 167 (N.D. Tx. Bkrtcy, 2009) ("To establish the feasibility of a plan, the debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan. Such projections cannot be speculative, conjectural or unrealistic.").

⁴⁰ *Request*, Exhibit A, Table 3. Licensees do not request a refund of the amount paid.

⁴¹ *Email from L.J. McCarty*.

⁴² 47 C.F.R. §§ 0.401 ("The Commission maintains several offices and receipt locations. Applications and other filings not submitted in accordance with the addresses or locations ... will be returned to the applicant without processing."); 1.7 ("pleadings and other documents are considered to be filed with the Commission upon their receipt at the location designated by the Commission."); *Champion Communication Services, Inc., Order on Reconsideration*, 15 FCC Rcd 23782, 23783-84 (WTB 2000).

⁴³ 47 C.F.R. § 1.1166(c).

⁴⁴ 47 C.F.R. § 1.1166.

⁴⁵ 47 U.S.C. § 159(c)(2) ("The Commission may dismiss any application or other filing for failure to pay in a timely manner any fee or penalty under this section.").

Debt Collection Improvement Act of 1996 (DCIA).⁴⁶ Hence, under the law, we dismiss the *Request*.⁴⁷

Our dismissal ends the matter, however, as a matter of administrative economy, we look to the substance of the *Request*, and, as we discuss next, we deny.

Because of missing documentation necessary to determine whether waiver is appropriate, Licensees' brief references to their bankruptcy proceeding⁴⁸ are insufficient to establish they are experiencing undue financial hardship. To complete the picture, Licensees should have provided: (a) the Tribune Company (Debtor-In-Possession) 2012 Financial Statements,⁴⁹ (b) First Day Pleadings⁵⁰ and other pleadings permitting Licensees to pay during reorganization administrative and other expenses, (c) the underlying documentation for the *Chicago Tribune* article that 2012 revenues were \$3.145 billion, a 1 percent increase from 2011,⁵¹ (d) the management incentive plan setting aside as much as \$42.5 million to pay 640 employees,⁵² (e) reports that bankruptcy "was mostly due to failing newspaper valuations in the face of digital competition,"⁵³ rather than the broadcast business, and (f) the *Plan* and *Confirmation Order* belatedly furnished November 20, 2012. Furthermore, Licensees should have included their motion⁵⁴ and the court's order seeking and receiving authorization to pay the fees for the 16 licenses, but not the others. We presume payment of the fees on 16 licenses was an allowed administrative expense under section 503(b)(1)(A) of the Bankruptcy Code. In part, section 503(b)(1)(A) provides for payment of administrative expenses that include actual, necessary costs and expenses of preserving the estate. Overall, by funding their management incentive plan with \$42.5 million to pay 640 employees,⁵⁵ Licensees refute their assertion that payment of the regulatory fees presents financial hardship.

Moreover, this multi-million dollar allotment for bonuses provides a sufficient source to pay the total regulatory fees and still provide each employee an average bonus exceeding \$65,600. As such, Licensees fail to demonstrate how the public interest is served by waiving the annual regulatory in favor of setting aside millions of dollars for discretionary bonus payments to a small group of employees.

⁴⁶ Public Law 104-134, 110 Stat. 1321, 1358 (Apr. 26, 1996).

⁴⁷ 47 C.F.R. §§ 0.401, 1.7, 1.1166.

⁴⁸ See text at n.2, above.

⁴⁹ <http://www.tribune.com/media/pdf/2012%20Consolidated%20Financial%20Statements.pdf>.

⁵⁰ Licensees did provide the Order Granting The Debtors' Motion Pursuant To 11 U.S.C. §§ 363(b) And 363(c)(1) Authorizing, But Not Requiring, The Debtors To Continue To Operate in the Ordinary Course, Including Payment Of Pre-petition Date Claims, With Respect To Brokers.

⁵¹ http://articles.chicagotribune.com/2013-06-17/business/chi-tribune-earnings-20130617_1_tribune-co-wgn-america-revenue-growth.

⁵² <http://www.chicagobusiness.com/article/20111004/NEWS06/111009970/tribune-bonus-plan-okd-by-bankruptcy-judge>.

⁵³ http://articles.chicagotribune.com/2012-12-31/news/chi-a-new-era-dawning-for-tribune-co-20121230_1_ceo-eddy-hartenstein-brands-in-major-markets-mix-of-profitable-assets.

⁵⁴ E.g., 11 U.S.C. § 503.

⁵⁵ <http://www.chicagobusiness.com/article/20111004/NEWS06/111009970/tribune-bonus-plan-okd-by-bankruptcy-judge>.

Additionally, available public information shows in 2012, Tribune Company reported revenues of \$3.145 billion, an increase from 2011, and net income of \$422,488,000 for the year ended December 30, 2012. Licensees' failure to disclose this information undermines Licensees' assertion of financial hardship, and it casts a shadow on Licensees' prior unsupported requests for relief. This financial information, which was available but not included, rebuts Licensees' broad assertion that the "pendency of Tribune's Chapter 11 Case alone satisfies the financial hardship standard and constitutes good cause for deferral and waiver."⁵⁶ Indeed, rather than evidencing financial hardship, this financial information appears to establish conclusively Licensees are able "to pay the regulatory fee and to maintain [their] service to the public."⁵⁷ Licensees have a duty to provide the Commission with complete and current information,⁵⁸ including explaining how Licensees are operating each of the 31 licensed stations,⁵⁹ and how each station is experiencing financial hardship.

As noted above in our discussion of other documents that Licensees should have furnished, complete and current financial documentation includes First Day Pleadings, schedules, and documentation relating to the debtor-in-possession post-bankruptcy operations, such as a statement of financial affairs, monthly operating reports, financial projections, requested and allowed expenditures for operations, the disclosure statement, draft plans, and post-bankruptcy financing arrangements. Debtors complete these matters as part of Chapter 11 proceedings under court rules and procedures; however, in this instance, they are missing from the *Request*. We take note that a Chapter 11 proceeding permits a debtor to restructure its obligations, so as to continue business during the period it is under the court's protection and to continue successfully after plan confirmation.⁶⁰ Further, we take note that at some point as part of the effort to develop the creditors' *Plan*, Licensees projected their expenses for post-confirmation operations, including paying annual regulatory fees.⁶¹ We comment on the procedure that requires reasonable projections to anticipate expenses, to highlight the obvious conclusion that the Commission's annual regulatory fees are an expected and projectable expense. Thus, if the projection is reasonable, it is unlikely that fee payment will present a hardship to a debtor emerging from reorganization with a confirmed plan. Here, the *Plan* supports that conclusion by providing for the full payment of allowed administrative expense

⁵⁶ *Request* at 3.

⁵⁷ *FY 1994 MO&O*, 10 FCC Rcd at 12761-62, ¶ 13.

⁵⁸ 47 C.F.R. § 1.65 ("Each applicant is responsible for the continuing accuracy and completeness of information furnished in a pending application ... whenever the information furnished ... is no longer substantially accurate and complete in all significant respects, the applicant shall as promptly as possible and in any event within 30 days, unless good cause is shown, amend or request the amendment of the application so as to furnish such additional or corrected information as may be appropriate."); *Bartholdi Cable Co. Inc. v FCC*, 114 F3d 274, 280 (DC Cir. 1997) (The Commission "need not sift pleadings and documents" to identify arguments that are not "stated with clarity" by a petitioner. It is the petitioner that has the burden of clarifying its petition before the agency.).

⁵⁹ Under the *Plan*, Article V, section 5.1, the debtor estates are not deemed consolidated.

⁶⁰ *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 203 (1983); *In re Lee Min Ho Chen*, 482 B.R. 473, 478 (D. Puerto Rico, Bkrtcy, 2012), *In re Gyro-Trac (USA), Inc.*, 441 B.R. 470, 479 (D.S.C. Bkrtcy, 2010).

⁶¹ See e.g., 11 U.S.C. §§ 1125, 1129; see *In re Ferguson*, 474 B.R. 466, 476 (D. S.C. Bkrtcy, 2012) ("to satisfy the requirements of adequate information under [11 U.S.C.] § 1125, a disclosure statement must contain the necessary financial information, data, and projections"); see *In re Idearc, Inc.*, 423 B.R. 138, 167 (N.D. Tx. Bkrtcy, 2009) ("To establish the feasibility of a plan, the debtor must present proof through reasonable projections that there will be sufficient cash flow to fund the plan. Such projections cannot be speculative, conjectural or unrealistic.").

claims, presumably including annual regulatory fees.⁶² Accordingly, financial hardship in 2012 cannot be assumed from the mere filing of bankruptcy in 2008. We note that Licensees delayed until November 20, 2012, before furnishing (without first moving for leave to file out of time) the July 19, 2012, *Plan* and the July 23, 2012, *Confirming Order*.

Licensees' general statement that "evidence of Chapter 11 bankruptcy ... is itself a sufficient demonstration"⁶³ overstates the Commission's position. First, the guidance was offered in the context of the "regulatory fee could act as an impediment to the negotiations and the transfer of the station to a new licensee."⁶⁴ Those factors are not present. Moreover, as discussed, the *Plan* provides for payment of the fees. Even so, when the Commission announced that evidence of bankruptcy or receivership is sufficient to establish financial hardship,⁶⁵ it was referring to the situation where the party was proceeding in a straight bankruptcy liquidation case. A party filing under Chapter 11 is not a *bankrupt*.⁶⁶ Moreover, in 2003, the Commission emphasized the applicant's duty to show that the bankruptcy proceeding represents extraordinary and compelling circumstances justifying a waiver when balanced against the public interest in reimbursing the Commission for its costs as reflected in the statutory fee provisions.⁶⁷ Here, Licensees' financial information, the content of the *Plan*, and previously discussed bonus allocation raise serious doubt whether any of the licensed stations are experiencing financial hardship. Further, the information in the Tribune Company (Debtor-In-Possession) 2012 Financial Statements⁶⁸ raises the question whether Licensees were entirely candid in their prior requests for waivers, and, under the circumstances, whether the waivers were proper. This information, which Licensees did not include with their *Request*, rebuts the broadly stated and unsupported claim of financial hardship. Licensees have not met their burden to establish both extraordinary and compelling circumstances and that the public interest is served in waiving the

⁶² *Plan*, Article I, section 1.1.1; Article II, section 2.2.

⁶³ *Request* at 2.

⁶⁴ FY 1994 MO&O, 10 FCC Rcd at 12761, ¶ 14.

⁶⁵ *Id.*

⁶⁶ *Matter of Phillips*, 966 F.2d 926, 930 (5th Cir. 1992), *rehearing denied* (1992),

Congress consolidated federal bankruptcy law in the Bankruptcy Act of 1898. *See* Act of July 1, 1898, c. 541, 30 Stat. 544. At that time, bankruptcy law only facilitated liquidation. Not until 1933 did Congress amend the Bankruptcy Act to permit reorganization of certain entities. *See* Pub.L. No. 72-420, 47 Stat. 1474 (1933). In 1938, Congress amended the Bankruptcy Act with the precursor to Chapter 11 to facilitate general corporate reorganization. *See* Act of June 22, 1938, Pub.L. No. 74-575, 52 Stat. 840 (1938). Until Congress substantially revised the Bankruptcy Act with the Bankruptcy Reform Act of 1978, the Bankruptcy Act apparently referred to entities undergoing Chapter 7 liquidation as "bankrupts," and those undergoing Chapter 11 reorganization as "debtors." *See* S. REP. No. 989, 95th Cong., 2d Sess. 23 (1978), *reprinted in* Historical and Revision Notes following 11 U.S.C.A. § 101(12) at 36 (1979), *and reprinted in* 1978 U.S.C.C.A.N. 5787, 5809. But the Bankruptcy Reform Act of 1978 removed all references to "bankrupt" in federal bankruptcy law, created the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, and adopted "debtor" to refer to all who seek protection under the Code, whether they do so through liquidation under Chapter 7 or reorganization under Chapter 11. *See* 11 U.S.C. § 101(12); *see generally* H.R. REP. No. 595, 95th Cong., 2d Sess. 3-5 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 5965-66 (recounting Reform Act's history and purpose).

⁶⁷ 18 FCC Rcd at 6090, ¶ 11.

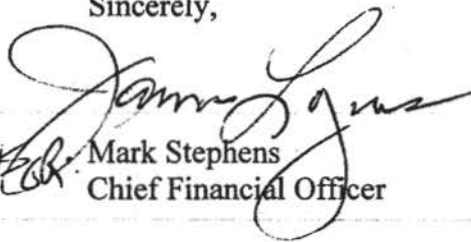
⁶⁸ <http://www.tribune.com/media/pdf/2012%20Consolidated%20Financial%20Statements.pdf>.

fees. Accordingly, we deny the request to waive the \$767,550, and we demand immediate payment of \$499,930, the unpaid balance owed on 15 licenses.

Payment of the FY 2012 regulatory fees is now due. The regulatory fees must be filed together with a Form FCC 159⁶⁹ within 30 days from the date of this letter. If Licensees fail to pay the full amount due by that date, the statutory penalty of 25% of the unpaid fee,⁷⁰ and interest and applicable additional penalties required by 31 U.S.C. § 3717 will accrue from the date of this letter. The debt is delinquent, and under the law,⁷¹ the Commission will initiate collection proceedings and impose other administrative sanctions.⁷²

If you have any questions concerning this letter, please contact the Revenue and Receivables Operations Group at (202) 418-1995.

Sincerely,


Mark Stephens
Chief Financial Officer

⁶⁹ You may find the Form 159 with complete instructions at: <http://www.fcc.gov/fees/form159.html>.

⁷⁰ 47 U.S.C. § 159(c)(1). See 1994 Report and Order, 9 FCC Rcd at 5346, ¶ 35 ("the petitioner will have 30 days to [pay the fee] in order to avoid the assessment of penalty charges and the invocation of any other available remedy. The filing of a petition for reconsideration will not toll this 30-day period.").

⁷¹ See 47 C.F.R. § 1.1901, *et seq.*

⁷² See 47 C.F.R. § 1.1910(b)(2) ("Action will be withheld on applications, including on a petition for reconsideration or any application for review of a fee determination, or request for authorization by any entity found to be delinquent in its debt to the Commission"); 47 C.F.R. § 1.1164(e) ("Any pending or subsequently filed application submitted by a party will be dismissed if that party is determined to be delinquent in paying a standard regulatory fee or an installment payment.").

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C. 20554

JAN 12 2015

OFFICE OF
MANAGING DIRECTOR

Tara Lyle
Veracity Networks
170 W. Election Road, Suite 200
Draper, Utah 84020

Licensee/Applicant: **Veracity Networks**
Waiver and Refund Request: Late Payment Penalty
Disposition: **Denied** (47 C.F.R. §§ 1.1157(c)(1),
1.1164)
Fee: Fiscal Year (FY) 2014 Regulatory Fee Late
Fee
Station: N/A
Date Request Filed: Oct. 24, 2014
Date Regulatory Fee Paid: Oct. 24, 2014
Date Late Penalty Fee Paid: Oct. 24, 2014
Fee Control No.: RROG-14-00015799

Dear Ms. Lyle:

This responds to Licensee's *Request*¹ for waiver and refund of the penalty for late payment of the Fiscal Year (FY) 2014 regulatory fee. As we discuss below, we deny because Licensee failed to demonstrate legal grounds or clear mitigating circumstances to waive collection of the penalty.

On October 24, 2014, Licensee paid the FY 2014 regulatory fee and accrued charges, and it submitted its *Request* that we waive and refund the late payment charges on the grounds that Licensee "was unaware of [the delinquent debt] until [Licensee] received an email from USAC on October 24, 2014 ... stating we had transitioned to red light status. ... [Licensee is] the successor for [a prior point of contact] and ... thought there would be a bill mailed to [Licensee]."²

Under 47 U.S.C. § 159 and the Commission's rules, we are required to "assess and collect regulatory fees" to recover the costs of the Commission's regulatory activities,³ and when the required payment is received late or it is incomplete, to assess a penalty equal to "25 percent of the amount of the fee which was not paid in a timely manner."⁴ Specifically, "[a]ny late

¹ Letter from Tara Lyle, Veracity Networks, 170 W. Election Rd., Suite 200, Draper, UT, 84020 to FCC, Revenue & Receivables Operations Group, P.O. Box 979088, St. Louis, MO, 63197-9000 (Oct. 24, 2014) (*Request*).

² *Request*.

³ 47 U.S.C. § 159(a)(1); 47 C.F.R. § 1.1151.

⁴ 47 U.S.C. § 159(c)(1); 47 C.F.R. §§ 1.1157(c)(1), 1.1164.

payment or insufficient payment of a regulatory fee, not excused by bank error, shall subject the regulatee to a 25 percent penalty of the amount of the fee ... which was not paid in a timely manner.”⁵

Each year, the Commission establishes the final day on which payment must be received before it is considered late, *i.e.*, a deadline after which the Commission must assess charges that include the statutory late payment penalty required by 47 U.S.C. § 159(c)(1) and 47 C.F.R. §§ 1.1157(c)(1) and 1.1164, as well as interest, penalties, and charges of collection required by 31 U.S.C. § 3717 and 47 C.F.R. § 1.1940. For FY 2014, the deadline for paying regulatory fees was September 23, 2014.⁶ Licensee failed to complete payment by that date, thus the unpaid fee became a delinquent debt and, as required by the law, we imposed charges. We received Licensee’s FY 2014 regulatory fee payment on October 24, 2014, along with the requested waiver.

Licensee’s assertions describe in general inadvertent error as the basis for failing to make a timely payment. The specific assertions do not describe “extraordinary circumstances”⁷ that, if proved, would be legal grounds or clear mitigating circumstance to waive collection of the penalty. Repeatedly, the Commission has held that “[l]icensees are expected to know and comply with the Commission’s rules and regulations and will not be excused for violations thereof, absent clear mitigating circumstances.”⁸ The absence of a reminder notice is not an excuse. Indeed, beginning in 2009, the Commission provided ample notice that it would not be sending paper pre-bills to regulatees.

The penalty required by 47 U.S.C. § 159(c)(1) and charges required by 31 U.S.C. § 3717 are not limited to situations where the failure to pay was knowing or willful. Indeed, neither the statute nor the Commission’s regulations contemplates a waiver of or reduction in the late payment penalty based on matters such as the amount of time after the deadline within which the regulatee satisfies its payment obligations.

If you have any questions concerning this matter, please call the Revenue & Receivables Operations Group at (202) 418-1995.

Sincerely,



FOR: Mark Stephens
Chief Financial Officer

⁵ 47 C.F.R. § 1.1164.

⁶ FY 2014 Regulatory Fees Due No Later Than September 23, 2014, 11:59 pm Eastern Time (ET), *Public Notice*, DA 14-1261 (Aug. 29, 2014).

⁷ *McLeodUSA Telecommunications Services, Inc., Memorandum Opinion and Order*, 19 FCC Rcd 6587, 6589 (2004) (denying the request for waiver of 25 percent penalty).

⁸ See *Sitka Broadcasting Co., Inc.*, 70 FCC 2d 2375, 2378 (1979), citing *Lowndes County Broadcasting Co.*, 23 FCC 2d 91 (1970) and *Emporium Broadcasting Co.*, 23 FCC 2d 868 (1970); see also *NextGen Telephone* (OMD, Apr. 22, 2010); *Istel, Inc.* (OMD, Apr. 22, 2010).